



March 16, 2015

## CON Modernization Listening Sessions

Department of Public Health

275 E. Main Street

Frankfort, KY 40621

Kentucky has a CON program for promoting orderly growth in the number of providers for specific health care services, including Hospice. Currently 36 states have some type of CON law and Kentucky is one of the states that regulates the growth of hospice providers by using a methodology to determine the need for hospice care in each service area. Today I will share information about the uniqueness of hospice care and speak in support of Kentucky's CON methodology for hospice.

In 2006, the State association of hospice providers worked with the Cabinet to develop a new approach to determine the need for additional hospice programs as the approach at that time was outdated. An in depth review was completed and a new methodology was adopted by the Cabinet. The updated CON methodology is working, as hospice penetration rates based on Medicare claims from 2000-2013 show an overall statewide increase.<sup>1</sup>

Hospice is considered the model for quality, compassionate, cost effective care for people facing a life-limiting illness. Hospice care is centered on the patient and family using an interdisciplinary team which includes physicians, nurses, therapists, social workers, bereavement and spiritual counselors and volunteers. In most

### Administrative Offices

Maurice Kaufmann Center  
2312 Alexandria Drive  
Lexington, Kentucky 40504  
(859) 276-5344 or (800) 876-6005

### Lexington

2409 Members Way  
Lexington, Kentucky 40504  
(859) 296-6100 or (800) 876-6005  
*Serving Fayette & Jessamine Counties*

### Center for Grief & Education

2409 Greatstone Point  
Lexington, Kentucky 40504  
(859) 277-2700 or (800) 876-6005  
*Serving Central Kentucky*

### Frankfort

663 Teton Trail  
Frankfort, Kentucky 40601  
(502) 223-1744 or (800) 926-1302  
*Serving Anderson, Franklin,  
Owen & Woodford Counties*

### Cynthiana

1317 US Highway 62E  
Cynthiana, Kentucky 41031  
(859) 234-6462 or (800) 756-6005  
*Serving Bourbon, Southern Grant,  
Harrison, Nicholas & Scott Counties*

### Mountain Community

57 Dennis Sandlin MD Cove  
Hazard, Kentucky 41701  
(606) 439-2111 or (800) 560-1101  
*Serving Breathitt, Knott, Leslie, Letcher,  
Morgan, Perry & Wolfe Counties*

### Mountain Heritage

160 Village Center  
Harlan, Kentucky 40831  
(606) 573-6111 or (800) 371-6112  
*Serving Bell, Clay, Harlan, Knox, Laurel  
& Whitley Counties*

### Mountain Rivers

101 Hibbard Street  
Pikeville, Kentucky 41501  
(606) 437-3700 or (877) 807-3054  
*Serving Floyd, Magoffin & Pike Counties*

### Northern Kentucky

7388 Turfway Road  
Florence, Kentucky 41042  
(859) 441-6332 or (800) 200-5408  
*Serving Boone, Campbell, Carroll,  
Gallatin, Northern Grant &  
Kenton Counties*

### Hospice Care Center

St. Joseph Hospital  
One St. Joseph Drive  
Lexington, Kentucky 40504  
(859) 313-2770  
*Serving Central &  
Northern Kentucky*

### Greg and Noreen Wells

Hospice Care Center  
101 Dennis Sandlin MD Cove  
Hazard, Kentucky 41701  
(606) 487-2800  
*Serving Southeastern Kentucky*

and on the web at  
[www.hospicebg.org](http://www.hospicebg.org)

<sup>1</sup> Kentucky State Summary of Medicare Hospice Utilization

cases, the care provided is in patient homes. The members of the team develop a plan to meet the medical, nursing, social, emotional and spiritual needs of the patient and family. Hospice is paid a daily, all-inclusive rate to cover all care and services to treat the terminal illness including care provided by the interdisciplinary team, medications, supplies, equipment and treatments. The per-diem rate obligates the hospice to provide all services necessary and assume the risk associated with the patient's health care costs.

Additionally, Medicare has also established a reimbursement cap that limits the total amount that can be paid to a hospice program each year. The purpose of this cap is to ensure that the hospice benefit remains cost-effective overall. Kentucky hospices are of the very few who have not exceeded their cap in nearly 20 years. Typically, states with a higher supply of hospice providers relative to the number of Medicare deaths, have a much higher level of cap violations. Historically, the number of cap violations has grown concurrent with rapid growth of providers in states without CON for hospice.

The CON process is important for the hospice industry because of the nature of the business. Hospice is a defined benefit with a fixed reimbursement. When price is fixed and supply is fixed, the laws of supply and demand no longer apply. As well market entry for providing hospice services is relatively easy as it requires minimal capital expenditures. A couple of states have eliminated the CON requirement and have seen firsthand the unintended consequences including a proliferation of hospice programs, generally serving metropolitan areas where access to care is already highest and easiest to provide. Rural areas of a state are rarely positively affected and can be ignored by providers. Without CON there is little or no market incentive for hospice providers to offer services in rural, remote portions of the state where the cost of providing in home care is more expensive. Medpac, in its 2012 Report to Congress, identified concerns that have been prevalent in states that do not have CON for hospice. In 2009, Alabama actually re-enacted CON for hospice in order to control unnecessary proliferation of provider supply and the associated adverse consequences.

The CON program in Kentucky allows the established hospice programs to care for patients in rural areas which would become increasingly difficult if hospices were able to start up without

restriction and choose at will or cherry pick the counties which are easier to serve. The result of the loss of CON for hospice, based on experiences of other states and statistical data, would be diminished access to care in rural areas, substantially more dollars spent on marketing and advertising, less investment in direct patient care, substantially increased risk of fraud and abuse and substantially greater workload for state regulatory agencies in oversight and survey responsibilities. An excess supply of hospice providers does not necessarily correlate with a positive impact on quality, access or service availability.

In summary, while growth is important, it is most important to ensure that growth is appropriate and promotes care in all areas, including underserved rural communities. The hospice CON methodology that was revised in 2006 by the Cabinet is working to ensure proper growth and access to hospice services in all regions of Kentucky. Therefore Hospice of the Bluegrass recommends that no further action be taken to alter the current CON process for hospice.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "Liz Fowler", written over a horizontal line.

Liz Fowler

President and CEO

Hospice of the Bluegrass